

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.14511 OF 2016

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the charge sheet filed in C.C.No.302 of 2016 on the file of I Additional Judicial Magistrate of First Class, Godavarikhani, for the offence punishable under Section 420 I.P.C.

The case of the prosecution is that on 8-1-2016 2nd respondent filed a complaint before the I Additional Judicial Magistrate of First Class, Godavarikhani alleging that the petitioner is his co-brother and out of relationship, the petitioner borrowed Rs.10,00,000/- from him, for his family necessities on 29-4-2013 and on the same day, the petitioner issued a cheque bearing No.581619 dated 29-4-2013 drawn on ICICI Bank, Mumbai, Navasari, Baseri Building 240, D.N.Road, Fort Mumbai in his favour and agreed to repay the amount within a month and believing the same, defacto complainant presented the said cheque after one month on 3-6-2013 for collection in S.B.H.Vittal Nagar Branch, Godavarikhani and the said cheque was dishonoured by Bank with an endorsement "Funds insufficient" and the same was intimated to the petitioner but the petitioner did not pay the amount.

On the reference of the complaint to the police under Section 153(3), police registered the above crime.

It is the case of the petitioner that cheque is dishonoured and it would attract offence punishable under Section 138 of N.I.Act but

not Sections 420 and 506 of I.P.C. While contending that these three cheques were stolen by petitioner's wife's brother, and filed present application.

Public Prosecutor contended that though investigation disclosed that there is a prima facie material to attract the offence under Sections 420 and 506 I.P.C., after completion of investigation, Police filed charge sheet having satisfied that evidence collected through investigation would prima facie establish that the petitioner committed offence punishable under Sections 420 and 506 I.P.C. The only apprehension of the petitioner before this court is that he is working as an employee in Indian Army and the police may arrest him at any stage.

However, taking into consideration of the facts of the case, I find that it is a fit case to direct the police to provide protection to the petitioner by following the procedure as contemplated under Section 41-A of Cr.P.C. and also the principle laid down by the Supreme Court in *ARNESH KUMAR v. STATE OF BIHAR AND ANOTHER*¹.

In case the petitioner appeared before the court, he may apply for proper relief under Section 37 of Criminal Rules of Practice for dispensing with his appearance before I Additional Judicial Magistrate of First Class, Godavarikhani, and on filing such application, I Additional Judicial Magistrate of First Class,

¹ 2014(8) SCALE 250

Godavarikhani, is directed to decide the said application in accordance with law.

Taking into consideration of the stage of the case, I find that it is not a fit case to quash the proceedings at this stage.

Accordingly, this Criminal Petition is disposed of.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 17-10-2016.

Dvs.



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Dated 17-10-2016.

Dvs